

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DONNA B. NOBLE; WILLIAM NOBLE,)	
husband and wife,)	
)	
Plaintiffs)	
)	
vs.)	Civil Action No. 08-348
)	Magistrate Judge Amy Reynolds Hay
CORPORAL BARRY GASTON, an)	
individual; THE PENNSYLVANIA)	
STATE POLICE DEPARTMENT,)	
Defendants)	

MEMORANDUM ORDER

On October 6, 2008, this case was referred to United States Magistrate Judge Amy Reynolds Hay for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636(b)(1)(A) and (B), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

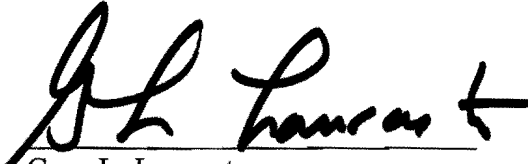
On January 9, 2009, the Magistrate Judge issued a Report and Recommendation (Doc. 24) recommending that the Partial Motion to Dismiss (Doc. 15) the Amended Complaint filed by the Defendants, Barry Gaston and Jeffrey Miller, be granted in part and denied in part as follows : Count I should be dismissed as to both Defendants insofar as they are sued in their official capacities, but denied insofar as it states a Fourth Amendment claim against Defendant Gaston in his individual capacity. Count II should be dismissed as to both Defendants. Decision with respect to the state law claims should be deferred pending the outcome of any motion for summary judgment.

Service of the Report and Recommendation was made on the parties. No objections were filed .

After a review of the pleadings and documents in the case, together with the Report and Recommendation, the following ORDER is entered:

AND NOW, this **27** day of January, 200**9** IT IS HEREBY ORDERED that the Defendant's Partial Motion to Dismiss (Doc. 15) is GRANTED in part and DENIED in part as follows: Count I of the Amended Complaint is dismissed as to the Defendants in their official capacities. Count I stands, insofar as it states a Fourth Amendment claim against Gaston in his individual capacity. Count II of the Amended Complaint is dismissed as to both Defendants. Decision with respect to Counts III - VI, the state law claims, is deferred pending the outcome of any motion for summary judgment.

The Report and Recommendation of Magistrate Judge Amy Reynolds Hay dated January 9, 2009 (Doc. 24) is hereby adopted as the opinion of the Court.


Gary L. Lancaster
United States District Judge

cc: Amy Reynolds Hay

Counsel of Record
Via CM-ECF